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No. 86-1851

In The Supreme Court of the United States

October Term, 1986

WILLIAM HAPANIEWSKI,

Petitioner,

v.

CITY OF CHICAGO HEIGHTS,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Petitioner does not state a question which he feels that this Court should review. Based on petitioner's argument, it appears that the question is as follows:

Did the Circuit Court of Cook County, Illinois, as upheld by the Appellate Court of Illinois, err when it applied a two year statute of limitations, pursuant to Illinois statute, to dismiss a suit against a municipality for alleged wrongful demolition of petitioner's building and alleged violation of petitioner's rights under the Constitution of the United States, the Illinois Constitution, and Section 1983 of the Civil Rights Act?

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JURISDICTIONAL STATEMENT

Respondent denies that the Court has jursidiction to consider this case under 28 U.S.C. sec.1257(3), and this position will be fully explained in respondent's argument.

STATUTORY PROVISIONS

Illinois Revised Statutes, 1977, Chapter 85, Sections 2-101(e) and 8-101, "Local Governmental and Governmental Employees Tort Immunity Act".

2-101. **Construction - Other Relief**

Section 2-101. Nothing in this Act affects the right to obtain relief other than damages against a local public entity or public employee. Nothing in this act affects the liability, if any, of a local public entity or public employee, based on:

(e) Section 1-4-7 of the "Illinois Municipal Code", approved May 29, 1961, as heretofore or hereafter amended.

8-101. **Limitation of Actions**

Section 8-101. No civil action may be commenced in any court against a local entitity for any injury unless it is commenced within 2 years from the date that the injury was received or the cause of action accrued.

Illinois Revised Statutes, 1979, Chapter 24 Section 1-4-7, "Municipal Code of 1961".

Section 1-4-7. **Damages to property by removal, etc., of unsafe or unsanitary buildings–Liability**

The municipality shall be liable for any injury occasioned by actionable wrong to property by the removal, destruction or vacation, in whole or in part, of any unsafe or unsanitary building, by any municipal officer, board or employee charged with authority to order or execute such removal, destruction or vacation, if such removal, destruction or vacation is pursuant to valid statutes, ordinances or regulations, and if such officer, board or employee has acted in good faith, with reasonable care and probable cause.

28 U.S.C. 1257(3). **State courts; appeal; certiorari**

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

STATEMENT OF THE CASE

Petitioner, plaintiff in the state court, brought his action for wrongful demolition of a building against the respondent, City of Chicago Heights, based on alleged violations of the "Illinois Municipal Code of 1961", Illinois Revised Statutes, 1979, ch. 24, sec. 1-4-7; the Constitution of the United States, the Illinois Constitution, and Section 1983 of the Civil Rights Act.

The Circuit Court of Cook County, the trial court, ruled that such claims brought against a local governmental unit were barred, pursuant to Illinois statutes ("Local Govenmental and Governmental Employees Tort Immunity Act", Illinois Revised Statutes, 1977, ch. 85, sec. 8-101), unless commenced within two years of an alleged injury. Since petitioner filed this case more than two years after demolition of his building, upon motion of the City of Chicago Heights, the Circuit Court dismissed the action. The Appellate Court of Illinois, First District, affirmed the Circuit Court in *Hapeniewski v. City of Chicago Heights*,

147 Ill.App. 3d 528, 497 N.E. 2d 97 on August 23, 1985, and denied rehearing on September 8, 1986. The Illinois Supreme Court denied leave to appeal on December 4, 1986, and also denied leave to file a motion for reconsideration on January 13, 1987.

SUMMARY OF ARGUMENT

The decisions of the courts of the State of Illinois should not be reviewed because this Court has no jurisdiction to hear this case and because petitioner has not so much as alluded to a reason to do so under Rule 17.

ARGUMENT

Petitioner relies upon 28 U.S.C. 1257(3) as grounds for invoking the jurisidiction of this Court. Simply stated, Section 1257(3) indicates that the Court, on Petition for Writ of Certiorari, will only consider "federal questions". It has been the law for a good many years that the application of state statutes of limitations is not a federal question which is reviewable by the Supreme Court.

In *Seneca Nation of Indians v. Christy*, 162 U.S. 283, 16 828 (1896) the Seneca Indians had brought suit for ejectment pursuant to a New York statute. However, the courts of that state had ruled that the suit was not timely filed in accordance with the state law's statute of limitations. The Court held as follows:

> The proper construction of this enabling act, and the time within which an action might be brought and maintained thereunder, it was the province of the state courts to determine. (citations).
>
> The Seneca Nation availed itself of the act in bringing this action, which was subject to the provision, as held by the court of appeals, that it could only be brought and maintained "in the same manner and within the same time as if brought by citizens of this state in relation to their private individual property and rights." Under the circumstances, the fact that the plaintiff was an Indian tribe cannot make federal questions of the correct

> construction of the act and the bar of the statute of limitations.
>
> As it appears that the decision of the court of appeals was rested, in addition to other grounds, upon a distinct and independent ground, not involving any federal question, and sufficient in itself to maintain the judgment, the writ of error falls within the well-settled rule on that subject, and cannot be maintained. (citations). *16 S.C.828 at 830-831.*

Similarly, in the present case, the fact that petitioner claims some violation of federally protected rights, does not make a federal question of whether the state court properly applied the state's statute of limitations. This proposition was also affirmed in *Preston v. City of Chicago*, 226 U.S. 447, 33 S.C.177 (1913), where plaintiff had claimed violation of his federal constitutional rights. The supreme court held that a laches defense, which was applied by the state court, was sufficient to preclude review by the Supreme Court of the alleged federal question. *33 S.C.177 at 178.*

It seems clear that this court does not have jurisdiction to consider this case, and the analyses of whether petitioner meets the burden imposed by Rule 17 seems unnecessary and duplicitous, but it seems that Section 1257(3) and Rule 17 imply a two part test for the court's issuance of writ of certiorari. That is, does federal question jurisdiction exist, and, if so, is it a federal question that will be considered under Rule 17? In this case the analyses of whether a federal question has been presented is really determinative and permeates the discussion of both the court's jurisdiction to hear the case and whether its discretion should be exercised in granting the writ.

Of course, this Honorable Court has wide discretion in granting review on writ of certiorari under Rule 17. However, petitioner has not even attempted to articulate grounds for review under that rule. He does not indicate that the Illinois Supreme Court has rendered a decision

on a federal question which is in conflict with decisions of other state courts of last resort or the federal court of appeals, or that an Illinois court has rendered a decision on a federal question that conflicts with applicable decisions of this Court; nor does he argue that a federal question has been decided at all.

There has been no determination of any question of federal law throughout this case. The courts of Illinois have decided that the period for bringing a suit against an Illinois municipality alleging violations of Illinois statutes, the Illinois Constitution, the United States Constitution, and the Civil Rights Act, is two years from the date of injury.

Petitioner does not contend that the Illinois courts lack authority to decide which limitation periods apply for state law causes of action or federal law causes of action brought in its courts, where no federal statues of limitations are articulated. Such federal law causes of action would be those brought pursuant to Section 1983 of the Civil Rights Act. Petitioner only argues that the Illinois courts have applied the wrong statute of limitations.

Frankly, respondent is befuddled by petitioner's apparent argument that this Court should review the Illinois courts' determination of the limitation period for this case. Petitioner cites several cases which hold that even if this suit were brought in the federal courts, they would seek to apply state statutes of limitations.

> When Congress has not established a time limitation for a federal cause of action, the settled practice has been to adopt a local time limitation as federal law if it is not inconsistent with federal law or policy to do so (citations). In 42 USC Sec.1988 [42 USCS Sec.1988], Congress has implicitly endorsed this approach with respect to claims enforceable under the Reconstruction Civil Rights Acts, *Wilson v. Garcia*, 471 U.S. 261, 85 L.Ed. 2nd 254 at 260 (1985).

While the highest court of Illinois has not ruled on the merits of this case, it did deny leave to appeal the decision of the Illinois Appellate Court which upheld the application of the two year statute of limitations. It is obvious that even the federal courts would defer to the decision of the Illinois courts and apply the two year statute of limitations.

Respondent contends that there is no issue for this Court to review. The Illinois courts have decided questions of Illinois law and it has not been argued by petitioner that the decisions are inconsistent with federal law. This alone should be sufficient to persuade the Court to deny petitioner's request for relief. Mr. Justice Frankfurter articulated just such reasons in *Maryland v. Baltimore Radio Show*, 338 U.S. 912, 94 L.Ed at 565, 566 (1949).

> A variety of considerations underlie denials of the writ, and as to the same petition different reasons may lead different Justices to the same result. This is especially true of petitions for review on writ of certiorari to a State court. Narrowly technical reasons may lead to denials. Review may be sought too late; the judgment of the lower court may not be final; it may not be the judgment of a State court of last resort; the decision may be supportable as a matter of State law, not subject to review by this Court, even though the State court also passed on issues of federal law. A decision may satisfy all these technical requirements and yet may commend itself for review to fewer than four members of the Court.

Finally, petitioner also apparently wishes the Court to consider the merits of whether his federally protected rights have been violated. The Illinois courts have never considered the merits of the case, they have only decided that petitioner did not bring his action in a timely fashion under state law, therefore, the merits of the claim should not be subject to review.

CONCLUSION

It is respectfully submitted that this Court does not have jurisidiction to hear this case, and even if it did, petitioner has not even begun to address his burdens under Rule 17 to invoke review by this Court of the decisions of the Illinois courts. No federal questions have been decided, and, therefore, the decisions of the Illinois courts should not be disturbed.

Respectfully submitted,

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